IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

FAO (GWA) No. 257 of 1999.

Date of decision : **22.5.2006**

Tripta Devi …….. **Appellant**

Versus

Sat Pal …….. **Respondent**

Coram

The Hon'ble Mr. Justice Surjit Singh, Judge.

Whether approved for reporting?

For the appellant: **Mr. B.S. Verma, vice Mr. Ajay Sharma, Advocate.**

For the respondents: **Mr. H.K. Bhardwaj, Advocate.**

Surjit Singh, Judge (Oral)

Present appeal is directed against the order, whereby petition, under Sections 7,8 and 10 of the Guardians & Wards Act, 1890, filed by respondent Sat Pal against appellant Tripta Devi, has been allowed and the custody of the minor son of the parties, named Tara Chand has been ordered to be given to the respondent.

2. Respondent filed a petition, under Sections 7,8 and 10 of the Guardians & Wards Act, 1890, seeking custody of his minor son. The allegations that were made in the petition may be summed up thus. Marriage between the respondent and the appellant had taken place in the

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Whether reporters of Local Papers may be allowed to see the Judgment?

year 1985 and out of the wedlock two children, one female named Promila, aged 9 years and the other male named Tara Chand, aged 6 years, were born. Male child Tara Chand was born on 26.7.1991. The respondent is employed as a Peon in a Central School at Chandigarh. The female child has been living with him from the very beginning and he has got her admitted in the Central School. In the year 1992, the appellant, without informing the respondent left the matrimonial home at Chandigarh and carried with her the minor son of the parties. Ever-since she has been residing in village Dhamandari in Una District with her parents. She does not have any source of income and because of that she is unable to maintain and educate the minor son properly. The respondent made various efforts to bring the appellant back to the matrimonial home, but to no avail. The appellant instead of returning to the matrimonial home, filed a petition seeking award of maintenance allowance, under Section 125 of the Code of Criminal Procedure, in the Court of the learned Chief Judicial Magistrate. She also filed a petition, under Section 13 of the Hindu Marriage Act, seeking dissolution of marriage by a decree of divorce. Both these petitions stand dismissed. The respondent alleged that he, being employed in a Government school and, therefore, having regular monthly income, enough to sustain himself and to bring up the two children, was in a better position to maintain, bring up and to give education to the children compared to the appellant.

3. Appellant contested the claim of the respondent. She alleged that the petition was barred as a petition, under Section 13 of the Hindu Marriage Act, filed by her for dissolution of marriage, was already pending, because against the order of dismissal of the said petition, she had filed appeal in the Hon'ble High Court. She alleged that she had been thrown out of the matrimonial home by the respondent after being given severe beating to force her to bring rupees fifty thousand in cash, a coloured television and a scooter from her parents and brothers. It was

also alleged that the respondent was habitual drunkard and addicted to other intoxicants and often gave beatings to the appellant under the influence of liquor. It was also alleged that the petition had been filed as a counterblast to the petition for grant of maintenance, filed by the appellant, under Section 125 of the Code of Criminal Procedure. It was alleged that the appellant was capable of providing maintenance and education to the minor son of the parties.

4. The trial Court, after recording the evidence of the parties, has returned the finding that the welfare of the minor lies in his custody being with the respondent, who is in Government service at Chandigarh and can, therefore, provide better maintenance and education to the children. Consequently, the petition has been allowed and the custody of the minor son of the parties has been ordered to be given to the respondent.

5. Appellant's grievance is that the trial Court has not appreciated the evidence and the law correctly.

6. I have heard the learned counsel for the parties and gone through the record.

7. It is admitted by the appellant in her testimony as RW-2 that the respondent is employed in a Central School at Chandigarh, on regular basis, and that the daughter of the parties has also been with him at Chandigarh. Her own statement suggests that the respondent's financial position is far better than that of herself or even that of her brothers, with whom she has been living these days. She has stated that she earns her livelihood by spinning **Ban** (grass twine). She has stated that she can spin about fifty kilograms of **Ban** in a week and the value of fifty kilograms **Ban** is about Rs.350/-. She has stated that she buys grass (Bagar) from the village and that one quintal grass yields about fifty kilograms of **Ban**. She has nowhere stated as to what is the value of one quintal of grass (Bagar). It can legitimately be presumed that the value of one quintal

grass (Bagar) should not be less than Rs.150/-, because a lot of labour is required for mowing the grass and the carrying it to the village. Therefore, the total earnings of the appellant cannot be said to be more than rupees seven – eight hundred a month. The respondent, on the other hand, is a regular Government servant. His salary is supposed to be around rupees six or seven thousand a month. He is posted at Chandigarh, where schooling is definitely of very high standard. Otherwise also, the respondent being the father and the preferential natural guardian, per Section 6 of the Hindu Minority and Guardianship Act, 1956, has the first right to have the custody of the son of the parties. The welfare of the minor child also lies in his being in the custody of the respondent.

8. In view of the above stated position, I find no merit in the appeal. Consequently the same is dismissed.

May 22, 2006 (BC) **(Surjit Singh)**
Judge